

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSMONDO DWAYNE SMITH,

Plaintiff,

-against-

SUPERINTENDENT MILLER, ET AL.,

Defendants.

23-CV-5811 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated in Cocksackie Correctional Facility,¹ brings this action *pro se*. The Court received Plaintiff's original complaint, application to proceed *in forma pauperis* ("IFP"), and prisoner authorization on June 30, 2023. Plaintiff's original complaint named as defendants Green Haven Superintendent Mark Miller and two John or Jane Does who work in the facility's mail room. The factual allegations contained in the original complaint focused largely on delays Plaintiff experienced in receiving his mail. By order dated July 20, 2023, the Court granted Plaintiff's IFP application.

On July 24, 2023, the court received another complaint from Plaintiff,² which names as defendants Superintendent Miller, the State of New York, and a number of other Green Haven officials. Because the new complaint did not include an IFP application and prisoner authorization, and also named Superintendent Miller as a defendant, the Clerk of Court docketed the submission as an amended complaint in this action.

¹ Plaintiff was incarcerated in Green Haven Correctional Facility at the time he filed the complaint.

² This complaint, although undated, was postmarked on July 19, 2023.

On August 21, 2023, the Court received a letter from Plaintiff stating that he intended the July 24, 2023 complaint as a new civil action, rather than an amended complaint in this action. (*See* ECF 7.) The Court therefore directs the Clerk of Court to remove the amended complaint (ECF 6) from this action, and to open that document as a complaint in a new civil action. The Clerk of Court is further directed to docket a copy of this order and Plaintiff's letters (ECF 7 and 8) in the new action. The Clerk of Court is also directed to amend the docket in this action to list as Defendants: Superintendent Miller, Jane Doe 1, and Jane Doe 2. The original complaint (ECF 1) will serve as the operative complaint in this action.

CONCLUSION

The Court therefore directs the Clerk of Court to remove the amended complaint (ECF 6) from this action, and to open that document as a complaint in a new civil action. The Clerk of Court is further directed to docket a copy of this order and Plaintiff's letters (ECF 7 and 8) in the new action. The Clerk of Court is also directed to amend the docket in this action to list as Defendants: Superintendent Miller, Jane Doe 1, and Jane Doe 2.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: August 24, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge